IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-428

DAVID GAETANO, and ALAN ERNEST, Next Friend of Unborn Child Roe and All Others Similarly Situated

Petitioners

vs.

THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Respondent

EARL J. SILBERT, United States Attorney for the District of Columbia

REAL PARTY IN INTEREST

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS WITH PETITION FOR A ~~WRIT~~ OF MANDAMUS

ALAN ERNEST
5713 Harwich Ct. #232
Alexandria, Va 22311

Counsel for Petitioners

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AUTHORITIES

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EARL J. SILBERT, United States Attorney for the District of Columbia

REAL PARTY IN INTEREST

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS

The petitioner moves for leave to file the attached petition for a writ of mandamus to the Court of Appeals and prays that it be granted and the relief requested therein speedily ordered.

Alan Ernest
5713 Harwich Ct. #232
Alexandria, Va 22311

Counsel for Petitioners

In The
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DAVID GAETANO, and ALAN ERNEST, Next Friend of Unborn Child Roe and All Others Similarly Situated

Petitioners

vs.

THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Earl J. Silbert, United States Attorney for the District of Columbia

Real Party In Interest

PETITION FOR A WRIT OF MANDAMUS

OPINIONS BELOW

The courts below issued no opinions.

JURISDICTION AND REASON WHY RELIEF IS SOUGHT IN THIS COURT

The order to be reviewed was entered by the Court of Appeals on June 27, 1978, Infra A-4. Jurisdiction is conferred on this Court by 28 USC 1651(a).

Relief is sought in this Court since this is obviously the appropriate Court to issue a writ of mandamus to a federal Court of Appeals.

QUESTIONS PRESENTED

1. For the 18th time, the Supreme Court is petitioned to overrule Roe v Wade, 410 US 113(1973) on the grounds that it is based on false evidence and millions of lives have been unconstitutionally exterminated.

Can it be pretended that it is any longer the government of the United States,- any government of Constitution and laws,- wherein a Tribunal holding office for life and asserting to be the ultimate arbiter is charged year after year with millions of illegal homicides by false evidence, and year after year the Tribunal summarily refuses to even listen?

2. The Court of Appeals effectively ruled that even granting the truth of the allegation in the complaint that the Supreme Court had illegally exterminated millions of lives by false evidence to which it had deliberately adhered, the Court of Appeals was bound by Roe v Wade regardless of any claim that it was wrongly decided and the killings are criminal. It is alleged that this is the very reasoning that led to the conviction of the Nazi judges at Nuremberg for criminal extermination.

3. The Court is also petitioned to overrule United States v Vuitch, 402 US 62, on the grounds that it illegally exterminated thousands of unborn victims on no evidence whatsoever.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT: "No person shall . . . be deprived of life . . . without due process of law."

FOURTEENTH AMENDMENT:"(N)or shall any State deprive any person of life ... without due process of law."

DECLARATION OF INDEPENDENCE: "We hold these truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life ..."

"It is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence." Gulf, Colo & S Fe Ry v Ellis, 165 US 150, 159-160(1897).

STATEMENT OF THE CASE

For the second time, the Court of Appeals has effectively ruled that it could not stop killings regardless of any claim that the killings are criminal.

I

In both cases, a complaint had alleged that Roe v Wade was based on false evidence and millions of lives had been unconstitutionally exterminated. An EXHIBIT A, filed with the complaint in the district court, showed:

1. even the Supreme Court admitted in Roe v. Wade that if the unborn were "a 'person' within the language and meaning of the Fourteenth Amendment" then the case for abortion for convenience "of course, collapses, for the fetus' right to life is then guaranteed specifically by the Amendment," and

2. the express, universal terms of the Fourteenth Amendment ("nor shall any State deprive any person of life . . . without due process of law") on their face, protect the lives of the unborn, as everyone else, and

3. the holdings of Chief Justice John Marshall (that can be traced through the Constitution, The Federalist Papers, and The Federal Convention of 1787) show that the Supreme Court had no lawful authority to construe an exception to express, universal terms (such as "any person") unless the Court could prove the exception to the express, universal terms beyond a reasonable doubt, and show that "had this particular case been suggested" to the framers the "language would have been so varied, as to exclude it," and

4. the Supreme Court presented false evidence to support its conclusion in Roe v Wade that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn," and but for the false evidence, there is not even a credible foundation, much less a compelling one, for denying the protection of the express, universal terms "any person" to the lives of the unborn, and

5. the truthful history corroborates that the express, universal terms "any person" include the unborn, as they do all categories of persons, and more certainly than many groups. The Supreme Court included corporations and aliens as a "person" within the language and meaning of the Fourteenth Amendment merely on the strength of the express, universal terms "any person," without any independent corroborating evidence whatsoever. (The unborn being the only persons ever excluded from the terms "any person")

In short, EXHIBIT A shows that the Supreme Court violated the very letter of the Constitution as well as its spirit, and condemned millions of victims to death whom the Constitution endeavors to preserve; and there does not appear to be any defense that will not amount to a claim that the Supreme Court is above the law.

II

The first case (presented here solely for background) Ernest v Carter et al, Pet. Cert. No. 77-184, denied October 3, 1977, arose as follows:

About September 17, 1976, the complaint was filed in the United States District Court for the District of Columbia, Civil Action No. 76-1744. The Complaint demanded that the district court enjoin Roe v Wade in the District of Columbia, on the grounds that Roe v Wade was based on false evidence and unborn lives were being unconstitutionally exterminated, and order the U.S. Attorney (hereinafter "government") to enforce 22 D.C. Code 201.

About October 7, 1976, the next friend filed a motion for summary judgment, and that same day, the government filed a motion to dismiss. The government neither replied to the motion for summary judgment nor attempted to prove any of the charges against Roe v Wade to be wrong.

Rather the government argued that "The Compliant Fails To State A Claim Upon Which Relief Can Be Granted" on the grounds that the district court was bound by Roe v Wade regardless of any claim that it was wrongly decided: "The nation's highest court whose decisions bind all lower courts has ruled." "This Court is bound by it." Government Memorandum in Support of Motion to Dismiss 3.

The government also argued that the trial court lacked "Subject Matter Jurisdiction Over The Comlaint" on the grounds that only "the pregnant mother" has standing to maintain an action for the unborn child. Government Memorandum on Support of Motion to Dismiss 2. Thus only the person who intends to kill the child would be able to maintain an action to protect the child's life.

On October 19, 1976, U.S. District Judge Aubrey E. Robinson, Jr., dismissed the case with prejudice without a hearing:

"ORDER"

"Upon consideration of defendants Edward H. Levi and Earl J. Silbert motion to dismiss the complaint and the memorandum in support thereof, and the court being fully advised in the premises, it is by the Court, this 19th day of October, 1976,

"ORDERED that the complaint be and the same is hereby dismissed with prejudice for lack of subject matter jurisdiction and failure to a claim upon which relief can be granted."

/S/ Aubrey E. Robinson Jr.
United States District Judge

On appeal to the U.S. Court of Appeals for the District of Columbia Circuit, the charge was reiterated that "the Supreme Court of the United States has unconstitutionally exterminated millions of lives by false evidence," Appellant's Brief 4, and likewise demanded that the Court of Appeals enjoin Roe v Wade in the District of Columbia. Id., at 7.

In a motion for summary affirmance, the government argued that "Roe v Wade, we submit, is dispositive of the matter. The District Court and this Court are bound by it." Motion 5. The government did not attempt to prove the charges against Roe v Wade to be wrong.

On May 17, 1977, the Court of Appeals granted the motion for summary affirmance, without explanation, and without any hearing(No. 76-2014):

"BEFORE: Bazelon, Chief Judge; Leventhal, Circuit Judge.

"ORDER"

"On Consideration of appellees' motion for summary affirmance, the opposition thereto, and of the appellant's motion to expedite appeal, it is

"ORDERED by the Court that the aforesaid motion for summary affirmance is granted and the order of the District Court on appeal herein is affirmed, and it is

"FURTHER ORDERED by the Court that the motion to expedite appeal is denied as moot."

"Per Curiam"

The Petition for Rehearing and Suggestion for Rehearing En Banc noted that the effect of the court's summary affirmance was that "granting the truth of the allegation that the Supreme Court of the United States has unconstitutionally exterminated millions of lives by false evidence to which

it had deliberately adhered," the Court of Appeals "is 'bound by' this Roe v Wade decision." "What sentient mind can contemplate a court's summary affirmance on such doctrines and not find itself seeking parallels to the Nazi legal system under Hitler." Pet. Rehearing 2.

This Petition for Rehearing and Suggestion for Rehearing En Banc was summarily denied without any attempt to prove the charges wrong:

"BEFORE: Bazelon, Chief Judge, Wright, McGowan, Tamm Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges.

"ORDER"

"On consideration of appellant's suggestion for rehearing en banc, and no judge of the Court in regular active service having called for a vote thereon, it is

"ORDERED by the Court, en banc, that appellant's aforesaid suggestion is denied."

"Per Curiam"

The U.S. Supreme Court summarily denied the petition for certiorari in that case, Ernest v Carter, Pet. Cert. No. 77-184, 54 L Ed 2d 134(1977), without attempting to prove the charge that the Supreme Court had "unconstitutionally exterminated millions of lives by false evidence" to be wrong. Pet. Cert. at 5.

III

The present case arose as follows:

About December 12, 1977, a complaint was filed in the United States District Court for the District of Columbia. The complaint demanded that the district court suspend Roe v Wade, and order the United States Attorney for the District of Columbia to enforce the D.C. abortion statute, 22 D.C. Code 201.

The complaint alleged that Roe v Wade was illegal, null and void on the grounds that it was based on false evidence, and unborn children in the District of Columbia were having their lives illegally exterminated in violation of the felony abortion statute, 22 D.C. Code 201, as well as the United States Constitution.

The complaint also asked the district court to suspend United States v Vuitch, 402 US 62, and order 22 D.C. Code 201 enforced in accordance with a construction set out in an EXHIBIT C. This EXHIBIT C showed that, without any examination of the history of the terms of 22 D.C. Code 201, or regard to a single rule for statutory construction, the Supreme Court construed the D.C. Abortion Statute to effectively result in abortion on demand by another name. Thus, United States v Vuitch rendered the preposterous result in the nation's capitol that abortions could be performed either to save the life of the mother, or effectively on demand. EXHIBIT C showed that result contrary to the intent of the lawmaker, and illegally exterminated unborn lives.

Petitioner David Gaetano had appeared at a Washington abortion clinic to save the lives of the unborn children. Gaetano stood in the doorway to the operating room until arrested and charged with the crime of unlawful entry, 22 D.C. Code 3102. It is claimed that Gaetano was exercising his common law, and perhaps constitutional, right to defend others from felonious assault.

Petitioner Alan Ernest, a lawyer, appears as a next friend to defend the constitutional rights of unborn children pursuant to Rule 17(c), Federal Rules of Civil Procedure.

An EXHIBIT A, outlined supra, was filed with the Compliant, showing that Roe v Wade was based on false evidence and millions of lives had been unconstitutionally exterminated. None of the courts

below pretended to prove EXHIBIT A **false**, but, as shall be seen, effectively ruled that they were bound by Roe v Wade regardless of any claim that it was wrongly decided.

About January 23, 1978, the United States Attorney for the District of Columbia (hereinafter the "government") filed a motion to dismiss. The government never attempted to prove any of the charges against Roe v Wade to be wrong. Rather the government argued that the complaint failed to state a claim on which relief could be granted on the grounds that the district court was bound by Roe v Wade "regardless of any claim that it was wrongly decided." Government Memorandum of Points and Authorities in Support of Motion to Dismiss 4.

The government also argued that the district court lacked subject matter jurisdiction on the grounds that only "the pregnant mother" has standing to maintain an action. Government Memorandum of Points and Authorities in Support of Motion to Dismiss 2. Thus only the person who intends to kill the unborn child would be able to maintain an action to defend the child's constitutionally protected right to life.

About January 25, 1978, there was a hearing on a motion for a preliminary injunction to suspend Roe v Wade in Washington. Petitioner's counsel went over the false evidence piece by piece, and showed how Roe v Wade was founded upon it. And the government continued to maintain that the district court was bound by Roe vWade regardless of any claim that it was wrongly decided.

On February 16, 1978, the district court entered its order dismissing the case for failure "to state a claim upon which relief can be granted," citing "Roe v Wade." Appendix A-3. Consequently the district court apparently held that it was bound by Roe v Wade "regardless of any claim that it was wrongly decided."

The district court also asserted, without giving any reasons, that "plaintiffs have not estab-

lished their standing to sue." Appendix A-3. Thus the district court apparently held, as the government urged, that only the person who intends to kill the child has standing to defend the child. (The district court also held, without giving any reason or authority, that "plaintiffs . . . are barred by a previous decision of this Court." Appendix A-3. However Gaetano was not a party to the earlier case and the unborn children were not even in existence when the prior judgment was made.)

On Appeal, the next friend presented the Court of Appeals with a MEMORANDUM OF LAW ON THE POTENTIAL CRIMINAL LIABILITY OF FEDERAL JUDGES WHO CLOSE THEIR EYES AND ENFORCE, PERMIT OR OMIT TO STOP ROE v WADE KILLINGS. Appellant's Brief 1- 22. This memorandum showed that the Court of Appeals had a clear legal duty to stop the Roe v Wade killings until the U.S. Supreme Court fully and fairly heard the questions about the legality of the killings. The memorandum showed that the Court of Appeals could be guilty of complicity in criminal homicides even if their only conduct was to omit to stop the killings.

On June 27, 1978, the Court of Appeals summarily affirmed the district court's order, sua sponte, without any hearing, or any motions or briefs from the government. See A-4, infra. The Court of Appeals made no attempt to prove next friend wrong.

On July 21, 1978, the Court of Appeals denied the Petition for Rehearing and Suggestion for Rehearing En Banc, infra at A-5, which further set out the statutory jurisdiction to suspend a Supreme Court decision on new evidence showing the decision to be wrong, and reiterated that it could amount to complicity in criminal homicides to omit to stop the killings pending a full and fair hearing in the Supreme Court.

V

The Court of Appeals has now twice effectively

used the arguments of the Nazi judges at Nuremberg that they could not be held accountable for "extermination" because they were bound by the "decrees" of the "supreme judge" of Germany. Analyze the rulings of the federal courts in the present case:

It is established that in ruling on a motion to dismiss for lack of standing, or for failure to state a claim upon which relief can be granted, the district court must accept as true all material allegations in the complaint. Warth v Seldin, 45 L Ed 2d 343, 356(1975); Kugler v Helfant, 44 L Ed 2d 15, 25 (1975). The Complaint, at 2, 4 & 6, alleged that "the Supreme Court's abortion decision, Roe v Wade, 410 US 113 (1973) is illegal, null and void on the grounds that it is based on false evidence and millions of lives have been illegally exterminated"; the complaint further alleged that the Court's "illegal, homicidal conduct is premeditated" and thus amounted to "crime."

Consequently, the courts below effectively ruled that, granting the truth of the allegation that the Supreme Court had perpetrated the crime of millions of premeditated illegal homicides by false evidence, the federal courts are bound by Roe v Wade regardless of any claim that it was wrongly decided, and the unborn can not defend their constitutional right to life in a federal court.

It is alleged that the lower courts' orders amount to the arguments made by the Nazi judges at Nuremberg that they were bound by the "decrees" of the "supreme judge" of Germany, regardless of any claim that the "decrees" were wrong. The Justice Case, 3 Trials of War Criminals Before the Nuernberg Military Tribunals 983-985, 1010-14. The Nuremberg court imposed life sentences on those judges, noting that "The dagger of the assassin was concealed beneath the robe of the jurist." Id., at 985.

Based upon EXHIBIT A and EXHIBIT C, supra, and

also based upon the MEMORANDUM OF LAW ON THE POTENTIAL CRIMINAL LIABILITY OF FEDERAL JUDGES WHO CLOSE THEIR EYES AND ENFORCE, PERMIT OR OMIT TO STOP ROE v WADE KILLINGS, supra, it is charged that the rulings of all the federal judges below (the two district judges, supra, and all nine judges on the Court of Appeals) that they could not stop killings regardless of any claim that the killings were illegal, manifests a premeditated design to kill, and amounts to complicity in criminal falsehood and criminal extermination.

REASONS FOR GRANTING THE WRIT

The Supreme Court of the United States is charged with criminal falsehood and criminal extermination. See, The Case Against The Supreme Court, infra pages A-1 and A-2 in the Appendix.

The evidence in Roe v Wade aside, the procedures used to effect the Roe v Wade killings alone condemn the killings as illegal. The Nuremberg court, in outlining the case against the Nazi judicial system, noted that many victims were executed after trials which "did not approach even a semblance of fair trial":

"In many instances they were denied the right to introduce evidence, to be confronted by witnesses against them. . . . They were ... denied the right of counsel of their own choice, and ocassionally denied the aid of any counsel." The Justice Case, supra page 11, at 1046.

The U.S. Supreme Court has, in broad form, used these very procedures to effect the Roe v Wade killings. For example, in Roe v Wade, the Court used evidence found by itself, which the parties had not cross examined in a judicial proceeding. The Attorney General of Georgia, a party, requested leave to

cross examine the Supreme Court's evidence:

"The Court has taken judicial notice of innumerable facts . . . some which are unknown to the parties but which apparently were extricated from various sources by the Court's diligent research, which facts nevertheless should be subject to refutation and counter evidence since they form the foundation of the Court's opinion." Petition for Rehearing at 4, Doe v Bolton, 35 L Ed 2d 201(1973).

But the Supreme Court would not allow its evidence to be cross examined by the party. Pet. Rehearing denied, Doe v Bolton, 35 L Ed 2d 694(1973).

And year after year, the Supreme Court has denied these applications to present evidence on behalf of the unborn victims to show that the unborn are persons whose lives are protected by the U.S. Constitution. This new evidence shows the Supreme Court's evidence to be false; and the Supreme Court will not allow the evidence to be presented.

And no abortion case before the Court appears to have had counsel to especially represent the unborn and defend their constitutional right to life.

In summary, without counsel representing the victims, it appears that the Supreme Court itself produced evidence to condemn the victims; denied permission to cross examine its evidence; and denied requests to present evidence on behalf of the victims, even evidence showing the Court's evidence to be false. Exterminations pursuant to these procedures cannot be pretended to be lawful.

Through Roe v Wade, the Supreme Court has asserted a second method for the government to condemn persons to death:

The first, set out in the Constitution, is by conviction by an impartial jury for violation of

express laws enacted by the people and applicable to all in the state; with right to representation by counsel; with right to be acquitted unless found guilty beyond a reasonable doubt; with provision to stop execution if new evidence is discovered.

The second, set out in Roe v Wade, is for a Tribunal holding office for life(without assistance of counsel to defend the victims)to rule the victims out of the human race as inferiors, in violation of the very letter and spirit of the Constitution, falsifying evidence to make the homicides appear legal, and year after year to repeatedly deny applications showing the exterminations to be illegal.

And this case shows that federal judges claim that they are "bound by" Roe v Wade, and can not stop the killings, nor even so much as ask a single question about the legality of the killings, regardless of any claim that the killings are criminal.

It is not possible to observe this violent transformation of the U.S. Constitution and fail to recall the observation of the Nuremberg court that, under the Nazi regime, Hitler was recognized to be the "supreme judge" of Germany; that the supreme law binding on all judges was what the "supreme judge" said it was; and the "supreme judge" could decree millions of persons to death in palpable violation of the German constitution. The Justice Case, supra page 11, at 1010-14, 986.

At Nuremberg, the Nazi judges claimed that they could "not be found guilty" of crimes against humanity, including "extermination," because the judges were "bound by" the "orders" of the "supreme judge." Id., 983-85, 1010-14. The Nuremberg court sentenced those judges to life imprisonment with the observation that "The dagger of the assassin was concealed beneath the robe of the jurist." Id., at 985.

While the Nazi judges perpetrated their exter-

minations during the heat and passion of war, it can not escape notice that the American judges perpetrated their exterminations in time of peace, in the quiet of judicial proceedings, by dishonest deliberation.

Now there is an historic reversal of positions between the German and American judges. In 1975 the Supreme Court of West Germany held that the clause in the German Constitution, "Everybody has the right to life," also "includes unborn human beings," that "Abortion is an act of homicide," and the state has a "duty" under the Constitution "to protect unborn life." See translation, 63 California Law Review at 1342, 1348-49. It was just about 35 years ago that the German judges decided that certain persons were not protected by their law. And it is now of paramount international importance to determine how it is possible for the high courts of two major democratic nations, construing constitutional phrases that are substantially identical, to reach diametrically opposing conclusions about the legality of million of premeditated homicides.

That examination, presented in EXHIBIT A, surely permits reasonable people to conclude beyond a reasonable doubt that the Supreme Court closed its eyes on the Constitution and condemned to death millions of victims whom the Constitution endeavors to preserve; and there appears to be no defense that will not amount to a claim that the Supreme Court is above the law- that as Hitler was to Germany, so the Supreme Court is to America.

If it be true, as Chief Justice Marshall once held(see Marbury v Madison, 1 Cranch 137, 163, 176, 178) that "government of laws, and not of men," founded in a "written constitution" deriving its just power from the "supreme" "authority" of "the people" is "the greatest improvement on political institutions," then the overthrow of that government of laws by lawless federal judges may be the most heinous crime in the history of government. Furthermore, the Declaration of Independence is perverted

by the judges to effectively read that "all men are created equal,- except those created to die for the convenience of others."

"Alas for your, lawyers . . . hypocrites! You are like tombs covered with whitewash; they look well from outside, but inside they are full of dead men's bones and all kinds of filth. So it is with you: outside you look like honest men, but inside you are brim-full of hypocrisy and crime." Matthew 23: 27-29(New English Bible)

The Constitution is written in English words; EXHIBIT A shows that the meaning of these English words is capable of independent verification; and the Supreme Court is not above the law.

If it be true, as Jefferson wrote, that America is an "experiment" to establish that "man may be governed by reason and truth" and that "truth and reason will eternally prevail, however in times and places they may be overbourne for a while by violence," then all those federal judges who either perpetrated, or closed their eyes and permitted, the Roe v Wade killings, can expect to be held to account for criminal extermination. As Chief Justice John Marshall wrote, for federal judges to "swear" to discharge their duties "agreeably to the constitution," and then "close their eyes on the constitution" and "condemn to death those victims whom the constitution endeavours to preserve" is worse than "solemn mockery," it is a "crime." Marbury v Madison 1 Cranch 137, 179-180 (1803). The Constitution will not permit the "dagger of the assassin" to be "concealed beneath the robe of the jurist."

Alan Ernest
Counsel for Petitioners

APPENDIX
THE CASE AGAINST THE SUPREME COURT

The evidence appears to support the charge that some Justices of the U.S. Supreme Court have violated federal criminal statutes, such as:

18 USC 242, Deprivation of rights under color of law,- It is a crime for government officials, acting under pretense of law, to willfully deprive persons of their rights secured by the U.S. Constitution. The documentation in EXHIBIT A, at the very least, permits reasonable people to conclude beyond a reasonable doubt that the unborn are persons whose lives are protected by the U.S. Constitution. The evidence that Justices specifically authorized killings throughout the United States, by a willfully false construction of the Constitution, would certainly permit a jury to conclude beyond a reasonable doubt that Justices, acting under pretense of law, had deprived millions of unborn persons of their right to life protected by the U.S. Constitution.

22 D.C. Code 201, D.C. abortion statute,- The felony abortion statute only permits abortions in the District of Columbia to preserve the mother's life or health. The evidence that Justices specifically authorized non-therapeutic abortions in violation of the positive criminal statute, by a willfully false construction of the Constitution, would surely permit a jury to find beyond a reasonable doubt that Justices had aided and abetted those killings.

22 D.C. Code 105 a, Conspiracy,- When Roe v Wade was decided, non-therapeutic abortions were illegal, not just in the District of Columbia, but generally throughout the United States. The evidence that Justices specifically authorized non-therapeutic abortions in violation of the States' positive criminal statutes, by a willfully false construction of the Constitution, would appear to permit a jury to find beyond a reasonable doubt that Justices conspired to effect those killings.

18 USC 1503, Obstruction of justice,- It is a

crime to endeavor to obstruct or impede the due enforcement of the law of the land, even by conduct that is otherwise legal, if the motive is corrupt or dishonest. The evidence that the Supreme Court has been petitioned year after year to overrule Roe v Wade on the grounds that it is based on false evidence and millions of lives have been illegally exterminated, and year after year the Supreme Court summarily refused to even listen, would appear sufficient to permit a jury to conclude beyond a reasonable doubt that Justices had dishonestly endeavored to obstruct or impede the due enforcement of the law of the land.

18 USC 1001, False statements,- The evidence that some Justices, within their official jurisdiction, made or adopted false statements in Roe v Wade, and repeated petitions indicated the false statements to be willful and knowing, might be sufficient to permit a jury to conclude beyond a reasonable doubt that some Justices had made false statements within 18 USC 1001.

18 USC 371, Conspiracy,- It is not only a crime to conspire to commit any criminal offense, but also to conspire to defraud the United States by misrepresentation or the overreaching of those charged with the carrying out of the governmental intention. The evidence already mentioned would appear sufficient to permit a jury to find beyond a reasonable doubt that Justices had not only conspired to commit the above mentioned crimes, but also to defraud the United States.

18 USC 1621, Perjury,- An oath of office to uphold the Constitution would probably not, under ordinary circumstances, support a charge of perjury. However, Chief Justice John Marshall held that for "judges" to "swear" to discharge their duties "agreeably to the constitution" and then "close their eyes on the constitution" and "condemn to death those victims whom the constitution endeavours to preserve" is worse than "solemn mockery," it is a "crime." Marbury v Madison, 1 Cranch at 179-180.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID GAETANO, et al.,)
Plaintiffs,)
)
v.) Civil Action No. 77-2115
)
EARL J. SILBERT,) Filed
Defendant) FEB 16 1978
James E. Davey, Clerk

ORDER

The Court has considered plaintiffs' motion for a preliminary injunction, the defendant's motion to dismiss, and the other pleadings filed by counsel on both sides (including plaintiffs' motion for class certification). The Court has also heard oral argument. The plaintiffs have not established their standing to sue, have failed to state a claim upon which relief can be granted, and are barred by a previous decision in this Court. O'Shea v. Littleton, 414 U.S. 488(1973); Roe v. Wade, 410 U.S. 113(1973); Unborn Child Roe v. Gerald Ford, et al., No.76-1744 (D.D.C. 1976). Since the Court will dismiss the complaint, there is no occasion to rule specifically on the motion for perliminary or permanent injunction. It is, therefore, this 16th day of February 1978,

ORDERED: That defendant's motion to dismiss is GRANTED, and that this action is hereby dismissed with prejudice.

/s/ Louis F. Oberdorfer
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1250 September Term 1977
David Gaetano
and
Alan Ernest, Next Friend of
Unborn Child Roe and all others similarly situated

Filed Jun 27, 1978
George A Fisher
Clerk

Appellants

v.

Civil Action 77-2115

Earl J. Silbert, United States Attorney for the District of Columbia

BEFORE: MacKinnon and Wilkey, Circuit Judges

O R D E R

On consideration of appellants' motion to certify question to the U.S. Supreme Court, or, in the alternative, motion for injunction pending appeal, it is

ORDERED by the Court that appellants' aforesaid motion is denied and, on consideration of the record herein, it is

FURTHER ORDERED by the Court, sua sponte, that the order of the District Court on appeal herein is summarily affirmed.

For the Court:
George A. Fisher, Clerk
By: Robert A. Bonner /s/
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1250 September Term 1977
David Gaetano
and
Alan Ernest, Next Friend of
Unborn Child Roe and all others similarly situated

Filed Jul 21, 1978
George A Fisher
Clerk

Appellants

v.

Civil Action 77-2115

Earl J. Silbert, United States Attorney for the District of Columbia

BEFORE: Wright, Chief Judge; Bazelon, McGowan, Tamm Leventhal, Robinson, Mackinnon, Robb and Wilkey, Circuit Judges.

O R D E R

Appellants' suggestion for rehearing en banc having been transmitted to the full Court, and no judge in regular active service having requested a vote thereon, it is

ORDERED by the Court en banc that appellants aforesaid suggestion is denied.

Per Curiam

For the Court:
George A. Fisher, Clerk
By: Robert A. Bonner /s/
Robert A. Bonner
Chief Deputy Clerk